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In the

Supreme Court of the United States

October Term, 1943.

No. 281.

WADE S. THOMSON, JOHN W. THOMSON, COURTNEY L. THOMSON, OLIVER C. THOMSON, MYRA M. JOHNSON, JULIA ELIZABETH THOMSON, BERTHA THOMSON, Guardian for Eugene Thomson, HUSTON THOMSON, CALVIN C. THOMSON, Minors, and LILLIAN CRAWFORD, *Petitioners,*

vs.

LETA BUTLER, ROZELL GRIFFITH, LAURA THOMAS SHEPPARD and COM P. STORTS, Executor, *Respondents.*

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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Petitioners seek a writ of certiorari to review a judgment of the United States Circuit Court of Appeals for the Eighth Circuit, affirming a final decree of the District Court of the United States for the Western Judicial District of Missouri dismissing this action for want of jurisdiction.

The opinion of the Circuit Court of Appeals is reported in 136 F. (2d) 644.

The opinion of the Federal District Court is not reported, but is found at page 47 of the Record.

The petition does not specifically bring forward any question for consideration, and the supporting brief is not direct nor concise, and therefore both violate Paragraph 2 of Rule 38 of the Rules of this Court and the many cases therein cited, and for those reasons alone certiorari should be denied.

The Facts.

Rather than attempt to point out the numerous inaccurate statements of petitioners, we choose to make a short and concise statement of the facts of the case.

This action was commenced by the complaint of petitioners filed with the District Court at Kansas City, Missouri, on May 31, 1941, against respondents to annul a judgment of the Circuit Court of Saline County, Missouri, rendered November 20, 1937 (affirmed September 27, 1940, by the Supreme Court of Missouri on appeal to that court—*Thomson* v. *Butler et al.*, 147 S. W. [2d] 437), finding a contested will to be the last will and testament of Laura E. Saltonstall, deceased, and to enjoin the beneficiaries under that will, so established, from receiving the legacies given them thereby, and to obtain a decree declaring that will to be null and void, and enjoining the beneficiaries thereof from claiming anything thereunder.

The Complaint.

The complaint alleged first that "this action is of a civil nature, a controversy between citizens of different states, arises under the Constitution of the United States,

and exceeds, exclusive of interest and costs, the value of three thousand dollars" (R. 1). It next alleged that five of the plaintiffs are citizens and residents of the State of Texas, that one of the plaintiffs is a citizen and resident of the State of Indiana, and the rest of the plaintiffs are citizens and residents of the State of Oklahoma (R. 1-2). It next alleged that the named defendants are citizens and residents of the State of Missouri (R. 2).

The complaint then alleged that one of the plaintiffs is a niece and the remainder are grandnephews and grandnieces of Laura E. Saltonstall (R. 2); that Laura E. Saltonstall died March 6, 1936, in, and a citizen and resident of, Saline County, Missouri (R. 5); that plaintiffs, as blood relatives of Laura E. Saltonstall, are some of those who were her heirs under the intestacy laws of Missouri (R. 2); that Laura E. Saltonstall left a will made in October, 1935 (R. 5); that on her death defendants Butler, Griffith and Sheppard destroyed the will made in October, 1935 (R. 5), and conspired with defendant Storts to, and they did, substitute for the October, 1935, will a forged will "of 1933 and 1934" (R. 5-6) under which defendants Butler, Griffith and Sheppard were the "chief beneficiaries" (R. 4). They allege that defendants offered the forged will for probate and it was admitted to probate in the Probate Court of Saline County, Missouri (R. 6).

They allege that thereafter one Price M. Thomson, an heir at law of the deceased, instituted in the Circuit Court of Saline County, Missouri, a suit to contest the alleged forged will (R. 3). That the named defendants in that case were Butler, Griffith and Sheppard (respondents here) (R. 3). They allege that the will contest case resulted in a judgment establishing the alleged forged will as the true will of Laura E. Saltonstall (R. 3-4), and that the judgment was affirmed on appeal by the Supreme Court of Missouri (R. 4).

They allege that the judgment of said Circuit Court, finding the contested will to be the true last will of the deceased, was obtained "upon false testimony, forged documents and illegal evidence" and by "false and forged evidence and perjured testimony of the existence of a will dated September 1, 1933, and December 2, 1934" (R. 4).

They allege that none of the plaintiffs had any notice of, or were served with process in, or appeared in, or were parties to, the will contest suit (R. 6-7), and that by reason thereof the judgment in that proceeding was void as to them and "in contravention of the due process clause contained in Section 1 of the Fourteenth Amendment to the Constitution of the United States" (R. 8).

The relief prayed was that the judgment of the Circuit Court, finding the contested will to be the last will and testament of deceased, be annulled; that the beneficiaries under that will and judgment be enjoined from enjoying the fruits thereof; and that the will established by the judgment of said Circuit Court be declared null and void, and that all legatees and devisees be enjoined from claiming anything thereunder (R. 9-10).

Respondents' Answer.

In respondents' answer, among other things, they set up, under paragraph 27 (R. 19), that there was a defect of parties defendant, in that all of the persons claiming under the decedent's will established by said judgment were not before the court and were necessary parties to the suit.

Respondents' Oral Motion to Dismiss for Want of Necessary Parties.

The case came on for trial on October 27, 1941 (R. 31). Counsel for petitioner made his opening statement to the court, after which counsel for respondents moved to dis-

miss for want of necessary parties, as alleged in paragraph 27 of their answer (R. 32). The court took the motion under submission, giving petitioners forty-five days' time to make the legatees and devisees named in the established will parties to the suit, saying (R. 34): "If they are not made parties and brought into the case, then the motion to dismiss will be ruled." Respondents' counsel then questioned the jurisdiction of the court if those legatees and devisees be brought in (R. 33-34), and the court said: "When they have been made parties, then whether the court has jurisdiction of the case will be considered upon motion" (R. 34).

Addition of Frank Bush as a Party.

One of the legatees named in the established will was Frank Bush, of Oklahoma. On November 3, 1941, he entered his appearance and asked to be made a party plaintiff (R. 35). On April 20, 1942, he filed a withdrawal as a party plaintiff and entered his appearance as a party defendant (R. 36, 37, 38) and by order of that date was permitted to do so (R. 48).

Respondents' Motion to Dismiss for Lack of Jurisdiction.

On April 24, 1942, respondents filed their verified motion to dismiss (R. 38) upon the ground that the defendant Frank Bush is and at all times mentioned in the suit was a citizen and resident of the State of Oklahoma; that four of the plaintiffs are and were at all times mentioned in the suit citizens and residents of the State of Oklahoma; and therefore there is not complete diversity of citizenship between the plaintiffs, on the one hand, and the defendants, on the other hand, and that the case is not one in the character of which

district courts of the United States are given original jurisdiction and that the court is without jurisdiction of the cause.

Petitioners on the same day filed their motion to set aside the order of April 20, 1942, permitting Frank Bush to withdraw as a party plaintiff and to enter his appearance as a defendant (R. 41).

On May 9, 1942, both of these motions were taken up before the court, evidence was offered, arguments were heard, and the motions taken under advisement (R. 46).

Opinion, Judgment and Decree of the District Court.

On May 13, 1942, the District Judge filed his memorandum opinion, judgment and decree (R. 47-50), finding that though Frank Bush was not an heir of Laura E. Saltonstall, he was a legatee in her will established in the Circuit Court of Saline County, Missouri, and is one of those whom petitioners seek to enjoin from claiming anything under that will and as to whom it is prayed that the will be declared null and void; that his only interest is that of a defendant; that it is immaterial whether he calls himself plaintiff or defendant, for if he stays in as a plaintiff, he must, on a question of jurisdiction, be realigned as a defendant, and therefore petitioners' motion to set aside the order of April 20, 1942, is without significance and is overruled. The court then found that some of the plaintiffs are citizens and residents of Oklahoma, and also that defendant Frank Bush is a citizen and resident of Oklahoma, and hence there is not complete diversity of citizenship, and that respondents' motion to dismiss must be sustained, absent some other ground of jurisdiction than diversity.

The court then referred to petitioners' contention that, inasmuch as they were not served with process in, or notified of, and did not appear in, the will contest suit, the judgment of the Circuit Court of Saline County, Missouri, took their property without due process of law in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, and held that under the law of Missouri petitioners were not entitled to be made parties to that proceeding unless they asked to intervene, which they did not do, and therefore the judgment of the Circuit Court of Saline County, Missouri, finding the contested will to be the last will of Laura E. Saltonstall, did not take petitioners' property without due process or in any way violate the Federal Constitution, and that the complaint did not state a case arising under the Constitution or laws of the United States.

The court thereupon ordered the complaint dismissed for want of jurisdiction (R. 50).

From this order petitioners appealed to the United States Circuit Court of Appeals for the Eighth Circuit (R. 59). As stated, that court affirmed (R. 77 to 85), finding and holding that:

(1) the trial court properly held that the necessary diversity of citizenship was lacking to give a federal court jurisdiction on that ground; and

(2) the complaint presented no question arising under the Constitution or laws of the United States, and that the trial court was correct in declaring that it had no jurisdiction of the suit on the basis of a federal question being involved.

Questions Sought to be Reviewed.

The questions sought to be reviewed are:

1. Whether there was complete diversity of citizenship of plaintiffs, on the one hand, and the defendants, on the other hand; and

2. Whether the complaint alleged a cause of action arising under the Constitution or laws of the United States.

Contentions of Respondents.

Respondents contend:

(1) There was not complete diversity of citizenship between the plaintiffs, on the one hand, and the defendants, on the other hand; and

(2) The complaint did not allege a cause of action arising under the Constitution or laws of the United States.

I.

The action was not between citizens of different states.

The action as originally commenced was by five citizens and residents of Texas, one citizen and resident of Indiana, and five citizens and residents of Oklahoma (R. 1-2) against four citizens and residents of Missouri (R. 2) to annul a judgment of the Circuit Court of Saline County, Missouri, finding a certain will to be the last will and testament of Laura E. Saltonstall, deceased.

But all the legatees and devisees in that will were necessary parties to a suit to annul the judgment sustaining it. *Eddie* v. *Parke's Executor,* 31 Mo. 513; *Wells* v. *Wells,* 144 Mo. 198, 45 S. W. 1095; *Parke* v. *Smith,* (Mo. Sup.) 211 S. W. 62; *Harper* v. *Hudgings,* (Mo.

Sup.) 211 S. W. 63. It appeared from the opening statement of counsel for petitioners at the beginning of a trial of the action on October 27, 1941, that all the legatees and devisees named in the will had not been made parties to the action (R. 32). Thereupon, counsel for respondents moved to dismiss for want of necessary parties (R. 32). The court expressed the view that all legatees and devisees in the will were necessary parties to this suit to annul the judgment sustaining it (R. 32), but he did not sustain the motion. He entered an order taking the motion under submission (R. 34) and granted leave to petitioners to make the legatees and devisees named in the will parties to the suit within forty-five days (R. 34), saying: "If they are not made parties and brought into the case, then the motion to dismiss will be ruled," and saying, further: "When they have been made parties, then whether the court has jurisdiction of the case will be considered upon motion" (R. 34).

On November 3, 1941, Frank Bush, a citizen and resident of Major County, Oklahoma, entered his appearance in the case as a party plaintiff (R. 35). Thereafter, on April 20, 1942, he filed a withdrawal as a party plaintiff and entered his appearance as a party defendant (R. 37), and after hearing, was permitted by the court to do so (R. 48). Frank Bush thus aligned himself as and became a defendant in the case on April 20, 1942.

On April 24, 1942, respondents filed their verified motion to dismiss, reciting that the defendant Frank Bush was at the time of the institution of the suit and still is a citizen and resident of the State of Oklahoma, and that five of petitioners were, at the time of the institution of the suit and still are, citizens and residents of the State of Oklahoma, and that therefore there is not complete diversity of citizenship between the plaintiffs, on the

one hand, and the defendants, on the other hand, and the cause is not one in the character of which district courts of the United States are given original jurisdiction, and therefore the court has no jurisdiction of the cause (R. 38). On the same day petitioners filed their motion to set aside the order of April 20, 1942, permitting Frank Bush to withdraw as a party plaintiff and to enter his appearance as a party defendant (R. 41).

On May 9, 1942, both motions were presented to the court, evidence was offered, arguments were made, and the motions taken under advisement (R. 46). On May 13, 1942, the court rendered an opinion (R. 47), finding that Frank Bush is the son of Ruth V. Bush, a sister of Laura E. Saltonstall, and that his mother was living at the death of Laura E. Saltonstall, and that under the law of Missouri he is not an heir of Laura E. Saltonstall and has no interest as such in her estate; that he is however a legatee under her will established in the Circuit Court of Saline County, Missouri, and is one of those whom petitioners seek to enjoin from claiming anything under the will and as to whom it is prayed that the will be declared null and void, and that his only interest in this case is that of a defendant and that it is immaterial whether he calls himself plaintiff or defendant, because, upon a question of jurisdiction, he must be aligned as a defendant, and therefore petitioners' motion to set aside the order of April 20, 1942, was without significance and was overruled (R. 49). The court then held that, inasmuch as some of the petitioners are citizens and residents of Oklahoma and the defendant Frank Bush is a citizen and resident of Oklahoma, there is not complete diversity of citizenship, and the court held that respondents' motion to dismiss because of incomplete diversity was good and must be sustained, absent some

other ground of jurisdiction (R. 49), and finding no other ground of jurisdiction sustained the motion and dismissed the cause (R. 50).

Inasmuch as Frank Bush was a necessary party to the suit, the suit could not proceed until he be brought in as a party; and inasmuch as he was not an heir of Laura E. Saltonstall under the Missouri statutes, but was a legatee under her will and one of those whom petitioners seek to enjoin from claiming anything under that will and as to whom they prayed that the will be declared null and void, his only interest in the case was that of a defendant and he aligned himself as a defendant, which, if he had not done, the court, upon a question of jurisdiction, would have been required to do anyway. *City of Indianapolis* v. *Chase National Bank of City of New York*, 314 U. S. 63, 69, 62 S. Ct. 15, 17; *Sutton* v. *English*, 246 U. S. 199; *Thomas* v. *Anderson*, (8 Cir.) 223 F. 41. So the court's action in refusing to set aside the order of April 20, 1942, permitting Frank Bush to withdraw as a plaintiff and to enter his appearance as a defendant, and in refusing to realign Frank Bush as a plaintiff, was entirely proper.

Frank Bush thus being a defendant in the case and petitioners admitting that he was a resident of the same state as some of the plaintiffs, it clearly appeared that there was not complete diversity of citizenship and the court necessarily was obliged to hold that it had no jurisdiction of the suit on the basis of diversity of citizenship. *City of Indianapolis* v. *Chase National Bank*, *supra; Treinies* v. *Sunshine Mining Co.*, 308 U. S. 66, 71; *DeHanas* v. *Cortez-King Brand Mines Co.*, (8 Cir.) 26 F. (2d) 233. Certiorari denied 278 U. S. 635.

II.

The action did not arise under the Constitution or laws of the United States.

Where jurisdiction of a district court has been invoked on the ground that the cause arises under the Constitution or laws of the United States, and this is challenged, the issue must be determined by considering the allegations of the complaint. If they disclose a real and substantial question of that nature, there is jurisdiction; otherwise there is none. *Southern Covington Ry. Co.* v. *Newport,* 259 U. S. 97, 99. A mere formal statement that such question exists does not suffice. The allegations must show that the suit is one which does really and substantially involve a dispute or controversy as to a right which depends on the construction or application of the Constitution or some law of the United States. *Southern Covington Ry. Co.* v. *Newport, supra.* Such jurisdiction cannot rest upon inference, argument or anticipated defense. *Mathers* v. *Urschel,* (10 Cir.) 74 F. (2d) 591, 593.

The only mention made in the complaint of the Constitution or laws of the United States is that found in Paragraph 1 (R. 1), where it is alleged that "the action arises under the Constitution of the United States," and in Paragraph 18 (R. 8), where it is alleged that the judgment of the Circuit Court upholding the will "was and is as to said plaintiffs absolutely void, without force or effect, and in contravention of the due process clause contained in Section 1 of the Fourteenth Amendment to the Constitution of the United States," and in Paragraph 19 (R. 8), where it is recited that said judgment "was and is a fraud upon the courts of the land, upon these plaintiffs, and contravenes and nullifies the establishment of justice as defined by the Constitution of the United

States, is inequitable, unjust and may not be permitted."

Not only is there no averment in the complaint which shows that the suit is one that really and substantially involves a dispute or controversy as to a right which depends on the construction or application of the Constitution or some law of the United States, but, moreover, the averments of the complaint show affirmatively that there is no question of any nature in the case arising under or involving an interpretation of the Constitution or laws of the United States.

From the charge in the complaint that petitioners were not served with process in, had no notice of, and did not participate in nor become parties to, the will contest suit (R. 6, par. 12; R. 7, par. 17; R. 8, par. 18) petitioners argue that their property was taken without due process in violation of Section 1 of the Fourteenth Amendment to the Constitution. There are numerous answers to that claim.

One is: Petitioners were not necessary parties to that suit. The right to contest a will is entirely dependent upon statute and in no way upon the Constitution or any law of the United States. *Campbell* v. *St. Louis Union Trust Co.*, 346 Mo. 200, 139 S. W. (2d) 935. We have a statute in Missouri relative to the contest of wills. It is Sec. 538, R. S. Mo. 1939, and reads as follows:

> "*Who May Contest Validity of Will, and How.*
> If any person interested in the probate of any will shall appear within one year after the date of the probate or rejection thereof, and, by petition to the circuit court of the county, contest the validity of the will, or pray to have a will proved which has been rejected, an issue shall be made up whether the writing produced be the will of the testator or not, which shall be tried by a jury, or if neither party require a jury, by the court."

This statute permits "any person interested" in the probate of a will to contest the validity of the will by suit in the circuit court of the county, instituted within one year from the date the will is probated. The phrase "any person interested in the probate of any will" as there used means any person who has a direct pecuniary interest in the probate of the will at the time the will is admitted to probate. *Campbell* v. *St. Louis Union Trust Co., supra; Jensen* v. *Hinderks,* 338 Mo. 459, 92 S. W. (2d) 108.

Within one year after the will was admitted to probate Price M. Thomson, an heir of Mrs. Saltonstall under the laws of descent of Missouri (R. 7, 21, 47) and therefore a "person interested in the probate of" her will, filed a suit in the Circuit Court of Saline County, Missouri, to contest the will. The complaint here alleges that the defendants named in that suit were Leta Butler, Rozell Griffith and Laura Thomas Sheppard, three of the respondents here (R. 7). The complaint and the reply here allege that said cause came on for trial on November 15, 1937, before the Circuit Court of Saline County, Missouri, and a jury, and resulted in a verdict and judgment on November 20, 1937, finding the contested will to be the last will and testament of Laura E. Saltonstall, deceased. Price M. Thomson appealed from that judgment to the Supreme Court of Missouri, which affirmed the judgment (R. 4, 22, 23). The opinion of the Supreme Court of Missouri affirming the judgment is reported in the case of *Thomson* v. *Butler et al.,* 147 S. W. (2d) 437.

These petitioners, or any one of them, being persons interested in the probate of the will, could have, had they or he chosen to do so, filed a suit in said Circuit Court to contest the will within the time allowed, or could have intervened in the suit brought by Price M. Thomson to contest the will, but they allege here that they did neither.

It is well settled in Missouri that persons, who, like petitioners, are not legatees or devisees in the contested will, and who might have an interest in the estate only if the will be set aside, are not necessary parties, either plaintiff or defendant, to a suit to contest the will. In Missouri the only necessary parties to a suit to contest a will are the legatees and devisees under the will. *Ehrlich* v. *Mittelberg*, 299 Mo. 284, 301, 252 S. W. 671; *Kischman* v. *Scott*, 166 Mo. 214, 224, 65 S. W. 1031; *Wells* v. *Wells*, 144 Mo. 198, 202; *Eddie* v. *Parke's Executor*, 31 Mo. 513; *Park* v. *Smith*, (Mo. Sup.) 211 S. W. 62.

Inasmuch as petitioners were not legatees or devisees under the will, they were not necessary parties to the suit filed by Price M. Thomson to contest it. Hence, the allegation in the complaint here, that petitioners were not served with process in, notified of, or made parties to the will contest suit, raised no federal question and does not in any way tend to show that the judgment in that case infringed upon any rights of petitioners guaranteed by Section 1 of the Fourteenth Amendment to the Constitution, because under the law they were not necessary parties to the suit.

A second answer is: That even if the Missouri law were otherwise, and made all those who would be heirs at law of the deceased, had she died intestate, necessary parties to a suit to contest her will, but they were not made parties, served with process and given an opportunity to be heard in such a suit, it is clear that any adverse judgment would be simply void as to them. As to them it would be as though no suit had been filed, and whatever rights they had would still obtain, and even in that situation no right or property of theirs would be taken by the judgment and the due process clause of the Fourteenth Amendment would not be in any way involved.

A third answer is: That petitioners concede in this Court that they were named defendants in the will contest suit and that publication service was had upon them (p. 13, petitioners' brief), but they argue that the service was invalid, contending that valid service upon such of them as were minors was obtainable only by personally serving them with writ and petition, under Sec. 748, R. S. Mo. 1929 (now Sec. 900, R. S. Mo. 1939). Under the law of Missouri, suits to contest a will in the circuit court are *in rem* proceedings. *State ex rel. Mitchell* v. *Gideon*, 215 Mo. App. 46, 237 S. W. 220; *McCrary* v. *Michael*, 233 Mo. App. 797, 109 S. W. (2d) 50; *Campbell* v. *St. Louis Union Trust Co.*, 346 Mo. 200, 139 S. W. (2d) 935, 129 A. L. R. 316. The Missouri statute (Sec. 891, R. S. Mo. 1939) provides for service of process *by publication* on nonresident defendants in action *in rem* when the plaintiff makes a positive allegation in his petition or by affidavit that a defendant is a nonresident and cannot be served in the state. The provisions of the Missouri statutes as to form and service of process are applicable alike to infants and adults, except there can be no voluntary acknowledgment of service by or on behalf of an infant. *Weber* v. *Weber*, 49 Mo. 45; *Baumgartner* v. *Guessfeld*, 38 Mo. 36. Petitioners make the argument that under Sec. 748, R. S. Mo. 1929 (now Sec. 900, R. S. Mo. 1939), those of them who were infants could be validly served only by personal service; but it is plain that said section provides merely an alternative method to that of publication under Sec. 891, and may optionally be made "in any of the cases mentioned in Sec. 891." It thus appears that petitioners were in fact defendants in, and validly served with process in, the will contest suit, though they were not necessary parties to the suit.

Petitioners further argue that because of the charges of fraud, forgery and perjury contained in the complaint,

the petition stated a cause of action within the *equity* jurisdiction of the federal district court. They confuse, however, the distinction between *equity jurisdiction* and *federal court jurisdiction*. We do not deny that federal courts, if they have jurisdiction of a case *as a federal court* under Sec. 24 of the Judicial Code, *have equity jurisdiction* to restrain parties from receiving the fruits of a judgment obtained in a state court by extrinsic fraud. In other words, if the court has federal jurisdiction—that is to say, the suit involves more than three thousand dollars and arises under the Constitution or laws of the United States or is between citizens of different states—then the court has *equity jurisdiction* to enjoin the parties from receiving the benefits of a judgment obtained in a state court by extrinsic fraud. But first, of course, the federal court must have federal jurisdiction—that is, power to hear the case.

The due process clause of the Fourteenth Amendment is not a guarantee against the use or results of perjury or fraud by parties to private litigation in state courts, uncountenanced by the general standards and processes of the state court system, nor does it afford a constitutional basis for relief in the federal courts from a judgment in such litigation obtained by these means. The rule announced in *Pyle* v. *State of Kansas*, 317 U. S. 213, and in *Mooney* v. *Holohan*, 294 U. S. 103, and similar cases, on which petitioners rely, applies only to public litigation in which authorities of the state, with responsibility for the litigation, have committed or countenanced a fraud or fundamental unfairness or other pollution of the judicial process, which has entered into a deprivation of life, liberty or property by the state. There is no violation of the Fourteenth Amendment in private litigation merely because the result is erroneous or unjust or

has been achieved by improper practices, where the state's judicial processes are such as, on the basis of recognized principles, have afforded the parties a fair opportunity for hearing and determination by the court. *Worcester County Trust Co.* v. *Riley,* 302 U. S. 292, 58 S. Ct. 185; *Central Land Co.* v. *Laidley,* 159 U. S. 103, 16 S. Ct. 80. If the law were otherwise it would be open to defeated litigants to maintain suits in the federal court to retry, upon a charge of fraud or error, all cases tried and determined in state courts.

Petitioners complain also at various places in their brief that the State of Missouri, by the judgment in the will contest suit, deprived them of the privileges and immunities accorded citizens of Missouri, in violation of Article IV, Sections 1 and 2, of the Fourteenth Amendment to the Constitution.

Not only does the complaint fail to make any reference to these provisions of the Constitution or to set forth any facts showing denial of any rights within them, or to raise any question (to say nothing of a real and substantial one) dependent upon them, but, on the contrary, the complaint affirmatively shows that no constitutional or federal question is involved.

For these reasons there is no support for petitioners' claim that they were denied due process or any right guaranteed them by the Constitution or laws of the United States.

Respondents respectfully submit that there is no merit in any of petitioners' contentions, and that certiorari should be denied.

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